

REMARKS

Claims 1-20 are pending in the above-identified application. These claims have been subjected to a Unity of Invention Requirement as follows:

Group I -- claims 1-6, 11 and 14-20 directed to compounds and compositions containing the compounds of formula I;
Group II -- claim 7 directed to the compound of formula I.2;
Group III -- claim 8 directed to the compound of formula I.3;
Group IV -- claims 9-10 directed to a process for preparing compounds of formula I;
Group V -- claim 12 directed to seeds including a compound of formula I; and
Group VI -- claim 13 directed to a method for controlling harmful fungi which includes treating the fungi with a compound of formula I.

It is asserted in the Office Action that the "core structure" of the compounds of formula I is disclosed in the prior art, such as in Pees '561 (USP 5,961,561), such that this fails to constitute a "special technical feature" and does not define a contribution over the prior art. Accordingly, it is asserted that Group I-VI fail to be linked by the same or a corresponding special technical feature to form a single general inventive concept.

Election

Applicant hereby elects the subject matter of Group I, i.e. claims 1-6, 11 and 14-20. This election is made with a traversal based on the reasons stated below.

Applicant further provisionally elects as a single disclosed species Compound I-1 in Table 1 at page 24 of the specification: 5-cyano-6-pentafluorophenyl-7-(4-methylpiperidinyl)-1,2,4-triazolo[1,5a]pyrimidine. This provisional election is also made with a traversal. It is submitted that claims 1-3, 6, 8, 11-14, 16, 17 and 20 read upon this elected species.

Reasons for Traversal of Unity of Invention Requirement

First, it is respectfully submitted that the Office Action incorrectly asserts that the compounds of formula I fail to include a special technical feature that defines over the prior art. It is incorrect to conclude that Pees '561 discloses or suggests the compounds of formula I. Note that the compounds of formula I include variable "X" which may be a cyano group for example, whereas in contrast, the corresponding variable "R3" of Pees '561 fails to overlap or provide any

suggestion to employ any of the substituents falling within the definition of "X" in formula I of the present claims. Consequently, Pees '561 fails to disclose or suggest the special technical feature of the compounds of formula I, which define over the prior art.

Second, it is submitted that the subject matter of Group II (sub-genus of compounds within formula I), Group III (another sub-genus of compounds within formula I), Group V (seed with compound of formula I), and Group VI (method of using compounds of formula I to treat fungi) are all very closely related to the elected subject matter of Group I. All of these claims rely principally on the special technical feature of the presence of a compound of formula I to define over the prior art. There fails to be any evidence indicating that any undue burden would be placed on the Examiner to at least examine the subject matter of these other groups. In fact, it appears that the search and examination issues significantly overlap with those of the elected subject matter of Group I.

Third, as noted in the "Administrative Instructions under PCT" and Annex B in the MPEP, Rev. 5, August 2006, pp. AI57 to AI58, the combination of claims from different categories is permitted under the Unity of Invention Rules. Specifically, under Annex B, Unity of Invention (e)(i), "...in addition to an independent claim for a given product, an independent claim for a process specially adapted for the manufacture of said product and an independent claim for the use of said product [is permitted]...". Consequently, at least the subject matter of Group IV (process for preparing compounds of formula I) should also be examined. It is further requested that the Examiner consider "rejoinder" of claims 9-10 with the other compound and composition "product" claims at an appropriate time during the prosecution of the present application.


In view of the above, at the very least, the subject matter of all of Groups I-VI should be examined under applicable Unity of Invention policies in the USPTO.

If any questions arise in the above matters, please contact Applicant's representative, Andrew D. Meikle (Reg. No. 32,868), in the Washington Metropolitan Area at the phone number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

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Respectfully submitted,

By 

Andrew D. Meikle
Registration No.: 32,868
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant